

DOCKET FILE COPY ORIGINAL

RECEIVED

JAN 10 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Implementation of the Local Competition
Provisions in the Telecommunications Act
of 1996

Interconnection between Local Exchange
Carriers and Commercial Mobile Radio
Service Providers

CC Docket No. 96-98

CC Docket No. 95-185

COMMENTS ON
US WEST "PETITION FOR WAIVER"
OF JANUARY 1, 1997, DEADLINE FOR
PROVIDING ELECTRONIC INTERFACES
TO OPERATIONAL SUPPORT SYSTEMS

Cindy Z. Schonhaut, Senior Vice President
Julia Waysdorf, Senior Director
Government Affairs
ICG Communications, Inc.
9605 East Maroon Circle
Englewood, CO 80112
(303) 575-6533

Albert H. Kramer
DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 828-2226

Attorneys for ICG Communications, Inc.

January 10, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

_____)	
Implementation of the Local Competition)	
Provisions in the Telecommunications Act)	
of 1996)	CC Docket No. 96-98
)	CC Docket No. 95-185
Interconnection between Local Exchange)	
Carriers and Commercial Mobile Radio)	
Service Providers)	
_____)	

**COMMENTS ON
US WEST "PETITION FOR WAIVER"
OF JANUARY 1, 1997, DEADLINE FOR
PROVIDING ELECTRONIC INTERFACES
TO OPERATIONAL SUPPORT SYSTEMS**

ICG Telecom Group, Inc. ("ICG"), a subsidiary of ICG Communications, Inc., hereby files its comments on US West Communications, Inc.'s ("USWC") Petition for Waiver ("Petition") of the requirement established in the Interconnection Order¹ that incumbent local exchange carriers ("ILECs"), including USWC, provide electronic interfaces to certain ILEC operational support systems ("OSSs")². ICG is the third largest

¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Dkt. Nos. 96-98 and 95-185, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996) ("First Report and Order") (subsequent history omitted).

² The Petition was placed on Public Notice on December 23, 1996.

"facilities-based" competitive local exchange carrier ("CLEC") and is headquartered in USWC's home region.

DISCUSSION

It is hornbook law that a party seeking a waiver must set forth specific facts detailing the grounds for the waiver and explaining how its factual circumstances differ from other parties who are complying with the requirement. Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing Industrial Broadcasting Co. v. FCC, 437 F.2d 680 (D.C. Cir. 1970)). Further, the waiver petition must explain why application of the requirement to the petitioner is unnecessary to advance the objectives of the requirement, or why application of the requirement would be contrary to the public interest or is otherwise contrary to public policy in the circumstances presented. *Id.* (citing Wait Radio v. FCC, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969); North Pittsburgh Tel. Co., 11 FCC Rcd 7626, 7630-31 (CCB 1996)). The USWC waiver request meets none of these standards. Indeed, grant of the Petition would be contrary to the public interest. The Commission should invoke its sanctions authority to levy daily forfeitures on USWC for non-compliance until USWC does comply with the Interconnection Order's requirements for electronic interfaces to OSSs.

A.

While USWC comes before the Commission seeking a waiver, the practicalities are that the Commission cannot force USWC to comply in a timely manner with the

Interconnection Order's mandate that USWC offer electronic access to its OSSs. As USWC itself points out, it is, *at this late date*, "impossible" to comply. Petition at 5. What USWC does *not* assert is that it would have been impossible to comply had USWC begun to engage in a diligent effort to comply and to plan for electronic interfaces to its OSSs, even on a contingent basis, when the possibility of such a requirement began to be publicly discussed.

Instead, USWC explains that it made a "reasonable assumption (based on [USWC's] reading of the requirements of the 1996 Act) that electronic access to OSSs would be somewhat circumscribed." Petition at 3. See also Affidavit of Robert H. Van Fossen at ¶¶ 11, 26, attached to the Petition ("Affidavit"). But USWC was aware of the possibility of a requirement for electronic interfaces as early as April, 1996. The Commission sought comment in the Notice of Proposed Rulemaking ("NPRM") leading to the Interconnection Order on whether electronic access to OSSs should be required. USWC was well aware that the Commission might have a view different than USWC's "reasonable assumption" of the scope of OSS access required under the Act; USWC filed comments arguing that OSSs are not network elements that must be unbundled under the Act. See Interconnection Order at ¶ 243, n. 1184. Nonetheless, USWC does not explain why it did nothing during the period the NPRM was pending to begin addressing the possibility that the Commission might order electronic interfaces.

USWC spends many pages in the Petition and the Affidavit explaining to the Commission how "complex" it is to offer electronic access to OSSs, how USWC will phase

in electronic interfaces to its OSSs, and what an advanced electronic access system USWC will have. But USWC does not detail exactly what specific steps, or even a single step, it has taken since the Interconnection Order was issued in August to attempt to comply with the deadline set in the Interconnection Order.³ Nor does USWC explain why other ILECs who like USWC were under no state commission OSS mandates (see Petition at 3, n.6, Affidavit at ¶¶ 11, 26) have not found it "impossible" to meet the Commission's deadline. Cf. Interconnection Order at ¶ 204; 47 CFR §§ 51.305(c), (d) (feasibility of interconnection at one point in a network constitutes evidence that interconnection is feasible at the same at point in similar networks).

In sum, USWC advances virtually no facts in the Petition detailing its own efforts either before or after the Interconnection Order to meet the Commission's deadline. Equally important, it offers no facts that distinguish USWC from all the other ILECs subject to the requirement to provide electronic interfaces to OSSs.⁴ The complexity, lack

³ When USWC does recite any facts, it is conspicuously vague on dates. For example, USWC refers only to the fact that its affiants post "was created" to ensure compliance with the Act; USWC does not say when the post was actually created. USWC states that it "recently asked" American Management Systems to assess the work needed to meet the FCC standards, but it does not say exactly when the request was made. (We note parenthetically that USWC concedes that the question it asked AMS and the answer it got were not relevant, since it did not represent an "apples-to-apples" comparison. Affidavit at 10.)

⁴ At one point, the Affidavit states that several commercial product offerings to meet the Commission's requirements and deadlines were being developed "for other RBOCs;" the Affidavit goes on to imply, but does not explicitly state, that these products could not satisfy USWC's needs because USWC's business processes "vary." Affidavit at 9-10. The Affidavit states that "USWC remains hopeful that a third-party developer product will be found to meet this need." (Emphasis added.) But USWC doesn't say that it actually ever looked for, or detail any efforts to find, a third-party developer product; (Footnote continued)

of product definition, and virtually every other descriptive fact of an OSS offered in the Petition and Affidavit are equally applicable to every other ILEC subject to the Commission's requirement.

Were it not styled as a "Petition for Waiver," the Petition could just as easily be a petition for reconsideration, since, rather than telling why US West should be granted a waiver, the Petition advances arguments of general applicability regarding why OSS systems are so complex that the timeframe for implementation promulgated by the Commission is inappropriate.⁵ The Petition offers no basis for distinguishing USWC from any other ILEC. Grant of the Petition on the meager factual presentation by USWC would open the floodgates for similar waivers that could ultimately vitiate completely the Commission's rule. See, e.g., Wait Radio, 418 F.2d at 1159 (the Commission may not eviscerate a rule by waivers); North Pittsburgh Tel. Co., 11 FCC Rcd at 7630 (same).

B.

The Commission found that electronic access to "operational support systems functions are essential to the ability of competitors to provide services in a fully competitive local service market" (Interconnection Order at ¶ 522) and "to the ability of other carriers to compete with incumbent LECs using unbundled network elements or resold services."

(Footnote continued)

indeed, USWC does not even explicitly say that it is currently looking for such a vendor--only that it is "hopeful" one will be found and that it will evaluate system offerings.

⁵ Indeed, it would not be inappropriate for the Commission to dismiss the Petition as an untimely petition for reconsideration.

(Interconnection Order at ¶ 518.) The Commission has thus found that electronic access to OSSs is essential to vindicate the important public interest in local exchange competition.

USWC does not challenge that finding.⁶ Instead, USWC asserts that it "believes that no third party will be materially or substantially harmed by the grant" of the waiver. Petition at 7. USWC seems to base this belief on "understandings" it has gleaned from discussions it has had with some competitors. These "understandings" are that (a) the OSS capabilities to which USWC is planning to provide access are the OSS capabilities that competitors need; (b) *if* phase in of OSS is required because of technical problems, USWC has chosen the correct sequence; and (c) most CLECs appear willing to wait for national standards. Affidavit at 14.

None of these "understandings" is relevant to whether USWC should be granted a waiver.⁷ The fact that USWC will be offering access to the OSS capability needed by competitors when it offers access to OSSs is irrelevant to whether USWC should be offering Commission mandated capabilities in a timely manner. Similarly, that USWC will properly sequence its *future* offerings of electronic access to OSSs in the right priority for vendors does not mean vendors would not be better off if they could have the capabilities to access OSSs *now*, as the Commission ordered. And while the Commission took note of the importance of national standards, it specifically ordered implementation of electronic

⁶ Indeed, USWC states that it "understands the importance to local exchange competition that the Commission has ascribed to access to ILECs' OSSs". Affidavit at 3.

⁷ Rather than present affidavits or actual statements of competitors, USWC gives a vague distillation of its competitors' positions.

interfaces to OSSs now, saying it would revisit the development of national standards later. See Interconnection Order at ¶¶ 527-528.

In fact, competitors are injured by the delay in OSS implementation. The lack of electronic OSS support for so-called "design services" and unbundled elements will delay full start-up and operation of CLECs. Design services include some of the most important high capacity business services for "high end" users.⁸ The POTS services⁹ for which USWC will offer some¹⁰ electronic access to OSSs are mostly relatively "low end" services, which apparently is the market to which USWC is trying to steer competitors.¹¹ The Commission's competitive objectives will be hindered by grant of the waiver.

⁸ "Design services require specific engineering design to ensure that the appropriate transmission or signalling conditioning, or other required components, have been defined to meet the technical requirements of the ordered service. Examples of design services include (but are not limited to) point-to-point private lines, multi-point private lines, foreign exchange circuits, DS0, DS1 and higher rate, T-1, SONET, PBX, PRI ISDN, and WATS services." Affidavit at n.4.

⁹ "Basic services, or POTS, generally involve only a loop, line equipment, telephone number, and associated switch calling features to enable the service. Once the central office equipment and outside facilities construction has been completed, no additional engineering or special equipment is required to provide the service. Examples of POTS include (but are not limited to) flat rate residence or business lines, CENTREX lines, BRI ISDN, switch verticle features, CLASS services, Advanced Intelligent Network ("AIN") services, and hunting arrangements." Affidavit at n.3.

¹⁰ USWC seeks a waiver only for its failure to provide OSS access for "design services" and unbundled elements. USWC does not seek a waiver for so-called "POTS" services even though USWC acknowledges that its electronic OSS access for resale of POTS is not complete. USWC reveals in a footnote (Petition at n.8) that for two (pre-ordering and ordering) of the five areas where the Commission required OSS access, the OSS access will be less than complete. USWC nonetheless characterizes its 60% compliance as "overwhelmingly" meeting the OSS access mandated by the Commission. Petition at 5.

¹¹ One major exception is that USWC will allow electronic access to OSSs to
(Footnote continued)

In sum, USWC offers no reason why application of the Commission's Rule to USWC is unnecessary to achieve the Rule's objective. On the contrary, grant of the waiver will thwart the Rule's objective by inhibiting the onset of competition.

C.

There is little the Commission can do at this late date to force USWC to comply with the Interconnection Order in a timely manner. Nonetheless, the Commission should not accept USWC's failure to comply by validating it with a waiver. The Commission should encourage USWC to quickly bring itself fully into compliance with the Commission's mandate. The Commission should send a strong message that it intends to deal harshly with ILECs who thwart the advent of competition by foot-dragging. The Commission should assess penalties on USWC at an increasing percentage of the maximum penalty permissible as USWC stretches out the time it takes to comply.

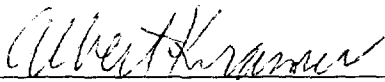
(Footnote continued)

support resale of its own network-based Centrex premises switching systems, which can be a "high end" product and is classified as a POTS service. Even here, however, there may be a subtle discrimination. USWC will not offer electronic access to OSSs to support sale of PBX lines, which are a "design service" and are required by Centrex' competitors who offer premises-based switching systems.

Dated: January 10, 1997

Respectfully submitted,

Cindy Z. Schonhaut, Senior Vice President
Julia Waysdorf, Senior Director
Government Affairs
ICG Communications, Inc.
9605 East Maroon Circle
Englewood, CO 80112
(303) 575-6533



Albert H. Kramer
DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 828-2226

Attorneys for ICG Communications, Inc.

Certificate of Service

I hereby certify that on January 10, 1997, I caused a copy of the foregoing "Comments on US West 'Petition for Waiver' of January 1, 1997, Deadline for Providing Electronic Interfaces to Operational Support Systems" to be sent by first class United States mail to Kathryn Marie Krause, US West Communications, Inc., 1020 19th Street, NW, Suite 700, Washington, DC 20036.



Albert H. Kramer